

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KEVIN STRAUB,

Plaintiff,

vs.

**CORRECTIONAL MEDICAL SERVICES,
et al.,**

Defendants.

Case No. 4:04-CV-1110 RWS

ORDER

This matter is before the Court upon Kevin Straub's Notice of Interlocutory Appeal [Doc. #82 and #83]. Plaintiff seeks to appeal this Court's Order of December 8, 2005, as to the denial, without prejudice, of plaintiff's motion to appoint counsel

28 U.S.C. § 1915 (a)

Title 28 U.S.C. § 1915(a)(1), (2) requires a prisoner seeking leave to appeal in forma pauperis to submit an affidavit of indigence and a certified copy of his prison account statement for the six month period immediately preceding the filing of the notice of appeal. Furthermore, § 1915(b)(1) requires a prisoner seeking leave to proceed on appeal in forma pauperis to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. *See* 28 U.S.C. § 1915 (b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. *See* 28 U.S.C. § 1915 (b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid.

Discussion

Plaintiff has not submitted a motion for leave to proceed in forma pauperis on appeal or a certified copy of his inmate trust fund account statement. However, the Court notes that its order of December 8, 2005 is not a final appealable order. See Bullock v. Baptist Memorial Hospital, 817 F.2d 58 (8th Cir. 1987).

Because it is unclear to the Court whether plaintiff understands that there has not been a final appealable order issued in his case, the Court will give plaintiff the opportunity either to withdraw his appeal or to continue with his appeal by submitting a motion for leave to proceed in forma pauperis and a certified copy of his inmate trust fund account statement for the correct period. If, in fact, plaintiff wishes to proceed with his appeal, he will be liable for the full \$255 appellate filing fee.¹ Therefore, the Court will order plaintiff to submit an affidavit and a certified copy of his inmate trust fund account statement for the six month period immediately preceding the filing of his notice of appeal pursuant to 28 U.S.C. § 1915 (a)(1)(2) or to file a motion to withdraw his appeal.

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff shall either file a certified copy of his prison account statement for **the six month period immediately preceding the filing of his notice of appeal on December 20, 2005**, and a “Motion to Proceed on Appeal in Forma Pauperis and Affidavit in Support - - Prisoner Cases” or file a motion to withdraw his appeal within thirty (30) days from the date of this order.²

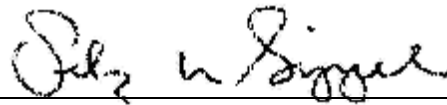
¹The Court notes that after it issues a final order in this case, if plaintiff appeals, he will again be liable for the \$255 appellate filing fee.

²When requesting a certified copy of his prison account statement, plaintiff is instructed to inform the Department of Corrections that the account statement must include all activity on his account during the six month period preceding the filing of his notice of appeal on December 20, 2005.

IT IS FURTHER ORDERED that if plaintiff fails to submit a certified copy of his inmate trust fund account statement and a “Motion to Proceed on Appeal in Forma Pauperis and Affidavit in Support - - Prisoner Cases” within thirty days from the date of this order, the Court will order him to pay the full \$255 filing and docketing fees for filing an appeal.

IT IS FURTHER ORDERED that the Clerk shall forward, together with a copy of this order, a form “Motion to Proceed on Appeal in Forma Pauperis and Affidavit in Support - - Prisoner Cases” to plaintiff to complete and return with his certified copy of his inmate trust fund account statement.

Dated this 27th day of December, 2005.

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE